

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2010-17221
Issue No: 3029
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 10, 2010
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on March 10, 2010. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly disqualify Claimant from her Food Assistance Program (FAP) group for failure to meet employment requirements?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant was an ongoing recipient of Food Assistance Program (FAP) benefits. Claimant was employed and receiving benefits under the Simplified Reporting Program.
- (2) On July 9, 2009, Claimant's employment ended.

- (3) On August 5, 2009, the Department received a Verification of Employment (DHS Form 38) form which stated Claimant had quit her employment by walking off her shift.
- (4) On September 30, 2009, Claimant filed for Unemployment Compensation Benefits (UCB). Her claim was denied.
- (5) On October 2, 2009, the Department case worker processed a Semi-annual review of Claimant's Food Assistance Program (FAP) case and included several updates of Claimant's circumstances including the loss of employment. Claimant was removed from the Food Assistance Program (FAP) benefit group. Claimant was sent a Notice of Case Action (DHS-1605) which stated her Food Assistance Program (FAP) benefits had actually increased but also showed the benefits were now based on a household size of 1.
- (6) On October 21, 2009, the Unemployment Insurance Agency determined that Claimant had not been fired for a deliberate disregard of the employer's interest. They determined that Claimant was eligible for Unemployment Compensation Benefits (UCB) because she was discharged for personality conflicts in the workplace and had not received any past warnings. Claimant began to receive Unemployment Compensation Benefits (UCB).
- (7) On January 14, 2010, the Bridges program re-determined Claimant's Food Assistance Program (FAP) eligibility by updating her income to include Unemployment Compensation Benefits (UCB). Claimant was sent a Notice of Case Action (DHS-1605) showing her Food Assistance Program (FAP) benefits would decrease and were based on a household size of 1.

- (8) On January 21, 2010, Claimant submitted a request for hearing and a copy of the October 21, 2009 determination by the Unemployment Insurance Agency.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

BEM 233B FAILURE TO MEET EMPLOYMENT REQUIREMENTS: FAP

DEPARTMENT PHILOSOPHY

DHS requires participation in employment and/or self-sufficiency related activities associated with the Family Independence Program (FIP) or Refugee Assistance Program (RAP). Applicants or recipients of Food Assistance Program (FAP) only must accept and maintain employment. There are consequences for a client who refuses to participate in FIP/RAP employment and/or self-sufficiency-related activities or refuses to accept or maintain employment without good cause.

DEPARTMENT POLICY

The policies in this item apply to all FAP applicants and recipients age 16 and over. Noncompliance without good cause, with employment requirements for FIP/RAP (see BEM 233A) may affect FAP if **both** programs were active on the date of the FIP noncompliance.

Michigan's FAP Employment and Training program is voluntary and penalties for noncompliance may only apply in the following two situations:

- Client is active FIP/RAP and FAP and becomes noncompliant with a cash program requirement without good cause.
- Client is pending or active FAP only and refuses employment (voluntarily quits a job, is fired or voluntarily reduces hours of employment) without good cause.

At no other time is a client considered noncompliant with employment or self-sufficiency related requirements for FAP.

FAP ONLY NONCOMPLIANCE

Refusing Employment Non-deferred

Adult members of FAP households must follow certain work-related requirements in order to receive food assistance program benefits.

Working

Disqualify non-deferred adults who were working when the person:

- Voluntarily quits a job of 30 hours or more per week without good cause, or
- Voluntarily reduces hours of employment below 30 hours per week without good cause, or
- Is fired without good cause from a job for misconduct or absenteeism (i.e. not for incompetence). Misconduct sufficient to warrant firing includes any action by a worker that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. It includes but is **not** limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work.

Note: If the job quit, reduction in hours or firing occurred **more** than 30 days **prior** to the application date, no penalty applies.

Not Working

Non-deferred adults who are **not** working or are working less than 30 hours per week must:

- Accept a bona-fide offer of employment

Note: A **bona fide offer of employment** means a definite offer paying wages of at least the applicable state minimum wage.

- Follow through and participate in activities required to receive unemployment benefits (UB) **if** the client has applied for or is receiving UB.

Note: Determine good cause before implementing disqualification.

MEMBER DISQUALIFICATION

Disqualifications for failure to comply without good cause are the same for FAP applicants, recipients and member adds. Evaluate each client's work requirement before imposing a disqualification. See BEM 230B "DEFERRALS".

- For the **first** occurrence, disqualify the person for one month or until compliance, whichever is longer.
- For a **second** or subsequent occurrence, disqualify the person for six months or until compliance, whichever is longer.

Bridges counts any previous FIP- or RAP-related FAP penalty as a first or subsequent occurrence.

Applicants

For **applicants**, begin the disqualification the month after application, **even if** the failure occurred within the 30 days before the application. Bridges sends a client notice to inform the client.

Member Add For a **member add**, the disqualification must begin the month after the new member was reported.

Recipients

For **recipients**, begin the disqualification the first month possible after you determine or are notified of the failure to comply. You must give the group **timely notice**.

Disqualification Begin Date

Begin the disqualification the first month after the negative action period ends. If the notice is **not** sent timely, impose the full disqualification period beginning the first month possible after discovering the error.

Once begun, the month(s) of disqualification proceed consecutively and **cannot** be interrupted, even if the noncompliant person or the group becomes ineligible for another reason.

Note: When a member in a FAP group becomes disqualified, Bridges budgets the member's income and expenses as they count toward the remaining eligible group members. See BEM 550 for budgeting instructions.

In this case, Claimant was disqualified from her Food Assistance Program (FAP) benefit group beginning in October 2009 based on a Verification of Employment (DHS Form 38) from the employer which stated she quit the employment. Claimant asserts she did not quit but was fired. The issue of how Claimant lost the employment was adjudicated by the Unemployment Insurance Agency. Their finding of fact was that Claimant had not been fired for a deliberate disregard of the employer's interest but rather was discharged for personality conflicts in the workplace and had not received any past warnings. The standard for disqualification for Food Assistance Program (FAP) benefits in Department of Human Services' policy is cited above and does not include being fired for personality conflicts in the workplace without any previous warnings about the situation. Under the legal principle of res judicata the question of how Claimant lost the employment has already been judicially decided and will not be re-adjudicated. The determination of the Unemployment Insurance Agency on that question shall be applied to the Department of Human Services case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services did not properly disqualify Claimant from her Food Assistance Program (FAP) group for failure to meet employment requirements.

It is ORDERED that the actions of the Department of Human Services, in this matter, are REVERSED.

It is further ORDERED that any Food Assistance Program (FAP) benefits Claimant was otherwise eligible for, be supplemented to her.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 24, 2010

Date Mailed: March 31, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

GFH 

cc: 